

## **REMARKS**

Claims 1-38 are pending. Claims 1, 2, 11, 19, 20, 25, and 35 are amended. Claim 24 is cancelled.

Claims 1 and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by DeGroot (US 6,167,308). Claim 1 has been amended to include "storing the delivered ATP regimen as a successful ATP regimen in association with the exploratory RCL". Claim 19 has been similarly amended. DeGroot discloses a tiered therapy device wherein the first scheduled ATP therapy is delivered upon detection of a tachycardia and, if an increase in RCL is measured, the first scheduled ATP therapy continues. If there is no increase in the RCL, the next scheduled therapy is delivered. DeGroot fails to teach or suggest storing a successful ATP regimen in association with the exploratory RCL. Thus, DeGroot does not anticipate and the rejection should be withdrawn.

Claims 2-18 and 20-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeGroot in view of Sun (US 6400986). While DeGroot teaches measuring an RCL after starting an ATP therapy, DeGroot does not teach or suggest storing either of a measured RCL or a success rate of the delivered ATP therapy. DeGroot teaches the capability of the device to switch from a first pacing regimen to a second pacing regimen without waiting to determine whether the first pacing regimen actually is successful. As such, the Applicant respectfully submits that DeGroot does not teach or suggest storing either of a measured RCL or a success rate of the delivered ATP therapy, set forth in the present invention, since the actual success or failure of a first scheduled therapy will never be determined in DeGroot when it is switched to a second regimen, making it impossible to store the success/failure of the therapy in association with the measured RCL when the regimen is switched.

Sun teaches an ATP protocol selection scheme in which ATP protocols are selected from a library in an adaptive fashion based upon a recorded history

of the number of successes and failures of particular protocols. Separate result tables may be maintained for each type of terminable arrhythmia classified with respect to rate and/or waveform morphology. Methods for detecting different types of tachycardias according to rate zones and waveform morphology are generally known to those having skill in the art. Once a particular type of tachycardia is detected, an ATP protocol is selected for the particular type of detected tachycardia. The library of protocols is updated based on the success of the therapy. Thus, once a therapy is selected, Sun does not teach or suggest making any measurement whatsoever, or determining any other parameter, after starting the therapy other than determining the success or failure of the therapy. In particular, Sun does not teach or suggest measuring an exploratory RCL and storing a successful ATP regimen in association with the exploratory RCL. Sun merely teaches storing the success rate based on the type of detected tachycardia (see Col. 3, lines 47-51 and Col. 4, lines 52-54). As such, Sun fails to remedy the deficiency of DeGroot relating to storing a successful ATP regimen in association with the exploratory RCL.

A limitation of the DeGroot method is that each time a tachycardia is detected, the first scheduled ATP therapy will be selected (col. 5, line 46), even if that therapy was previously unsuccessful. When the DeGroot method is modified by the selection protocol taught by Sun, as suggested by the Examiner, the initial therapy selected would be based on the success rate of the therapy and the type of tachycardia detected, as discussed above, and would have nothing to do with an associated RCL measurement since neither reference teaches or suggests storing a successful ATP regimen in association with the exploratory RCL. As such, even when combined in the manner suggested by the Examiner, the references fail to meet the claims. Accordingly, the obviousness rejection of claims 2-18 and 20-38 should be withdrawn.

Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

December 5, 2006  
Date

/Michael C. Soldner/  
Michael C. Soldner  
Reg. No. 41,455  
(763) 514-4842  
Customer No. 27581